


BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2000-583-T - ORDER NO. 2001-277

APRIL 27, 2001

IN RE: Application of All-8, Inc. D/B/A Apartment)	
Movers Etc. Greenville, 403 F Miller Road,)	ORDER GRANTING
Mauldin, SC 29607 for a Class E Certificate)	CLASS E CERTIFICATE
of Public Convenience and Necessity.)	
)	



This matter comes before the Public Service Commission of South Carolina ("Commission") on the Application of All-8, Inc. d/b/a Apartment Movers Etc. Greenville (hereafter referred to as "All-8" or the "Applicant"). By its Application, All-8 requests a Class E Certificate of Public Convenience and Necessity to transport household goods. Specifically, All-8 seeks authority to transport household goods as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
From Greenville, Spartanburg, Newberry, Greenwood,
McCormick, Anderson, Oconee, Pickens, Laurens,
Abbeville, Cherokee, York, Lancaster, Union, Chester, and
Fairfield counties to all places in South Carolina and from
all points and places in South Carolina to Greenville,
Spartanburg, Newberry, Greenwood, McCormick,
Anderson, Oconee, Pickens, Laurens, Abbeville, Cherokee,
York, Lancaster, Union, Chester, and Fairfield counties.

The Commission's Executive Director instructed All-8 to publish a Notice of Filing in a newspaper of general circulation in the service area desired. The Notice of Filing provided details of the Application and of the requested authority and provided

information for public participation in the proceedings concerning the Application. No Petitions to Intervene were received.

A hearing on All-8's Application was held on March 8, 2001, at 2:30 P.M. in the hearing room at the offices of the Commission. The Honorable William T. Saunders, Chairman, presided at the hearing. All-8 was represented by Peter G. Siachos, Esquire. Kim Swanson, President of Carl's Incorporated, Patricia T. Clark, Secretary of All-8, Inc., Matthew Clark, and Veronica Kanina appeared and presented testimony on behalf of the Applicant. Jocelyn G. Boyd, Staff Counsel and Florence P. Belser, Deputy General Counsel, represented the Commission Staff. The Commission Staff did not present any witnesses.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2000) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

...

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2000) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2000) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulation; and
- (2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirements of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Regs. 103-102(1) (Supp. 2000) defines "Certificate of PC&N" as the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers.

Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Regs. 103-102(5) (Supp. 2000) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

8. A "Class E Motor Carrier" is defined in 26 S.C. Regs. 103-114 (Supp. 2000) as a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission."

9. 26 S.C. Code Regs 103-133 (Supp. 2000) is entitled "Proof Required to Justify Approving an Application" and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to be appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses. If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for

¹ 26 S.C. Code Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.P.D.P.S safety records. Applicants should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina, and agree to operate in compliance with these statutes and regulations.
- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

10. 26 S.C. Code Regs. 103-134 (Supp. 2000) is entitled "When Hearing May Be Held" and provides in relevant part that "[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served."

EVIDENCE OR RECORD

Patricia Clark is currently employed by Apartment Movers etc. as the Office Manager. Clark is the Secretary of All-8, Inc. Clark testified that she and her husband Steven Clark, President of All-8, will purchase the Apartment Movers etc. franchise in Greenville after a Certificate of Public Convenience and Necessity is granted to All-8. According to the testimony, All-8 will be operated similarly to the way Clark currently runs Apartment Movers etc. If necessary, Clark will rely on the expertise and operations manual of Apartment Movers etc. for assistance in operating All-8. Clark has been employed by Apartment Movers etc. since December 2000. She stated that All-8 will employ the same trained movers currently employed by Apartment Movers etc. after All-8 receives Certification. All-8 will purchase the trucks, office furniture, and computer system of Apartment Movers etc. in the franchise agreement.

Kim Swanson, President of Carl's, Inc. and owner of Apartment Movers etc. has been in the moving business since 1995. Swanson is familiar with the manner in which Apartment Movers etc. in Greenville is operated. Apartment Movers etc. was granted statewide authority by the Commission in 1995 and is franchised nationally; the equipment in Charleston (i.e., computer system, pricing system, uniforms, trucks, etc.) is identical to the equipment used to move household goods in Greenville. Apartment Movers etc. will not request that the Commission downward amend its statewide authority. Swanson testified that if All-8 receives certification, Apartment Movers etc. will not initiate business in the Greenville area; she is partitioning off her operations in the Greenville and Spartanburg areas and giving this area to All-8. Swanson testified that

the Clarks, as operators of the Apartment Movers etc. office in Greenville, are familiar with the Commission's rules and regulations. Clark testified that she is familiar with the demand for movers in Greenville and she testified that she has first hand knowledge of the availability and unavailability of moving services. According to Swanson, other movers in the Greenville area have referred potential customers to Apartment Movers etc. After the franchise agreement is executed, Swanson will not operate an office to move household goods in Greenville. Swanson opined that because Apartment Movers etc. will no longer initiate business in the Greenville area, All-8 can replace the need for a mover of household goods. Apartment Movers etc. will not seek to compete against All-8.

Matthew Clark is the son of Steven R. Clark, President of All-8, Inc., and Patricia T. Clark and he is a supervisor at Apartment Movers etc.'s office in Greenville. Clark has twelve years of experience in the moving business and he was employed by Apartment Movers etc. for the last two years in Charleston. Clark handles many tasks (i.e., paperwork, telephone calls, moving household goods, and driving trucks) as an employee of Apartment Movers etc. and he is familiar with safety regulations and inspections. Clark has driven different types of trucks including tractor trailers and straight trucks.

Veronica Kanina is currently a resident of Laurens county. Kanina testified that she will be moving back to Greenville county soon and has contacted at least six household goods movers in the Greenville area for their services. According to Kanina, Apartment Movers etc. was the only mover who informed her that they could move her household goods at her convenience. Other movers could only move her household

goods after dark, requested a driving fee (a charge to drive to Kanina's residence and back to Greenville), or required a two-week notice to move her goods.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. According to the Application and the testimony presented, All-8, Inc., desires to provide moving services of household goods from Greenville, Spartanburg, Newberry, Greenwood, McCormick, Anderson, Oconee, Pickens, Laurens, Abbeville, Cherokee, York, Lancaster, Union, Chester, and Fairfield counties to all places in South Carolina and from all points and places in South Carolina to Greenville, Spartanburg, Newberry, Greenwood, McCormick, Anderson, Oconee, Pickens, Laurens, Abbeville, Cherokee, York, Lancaster, Union, Chester, and Fairfield counties. We find that based upon the evidence presented at the hearing, the Applicant should be granted authority to provide moving services of household goods between points and places in Greenville and Spartanburg counties.

2. The Applicant, All-8, Inc., is fit, willing, and able to provide and properly perform household goods moving services in Greenville and Spartanburg counties. This finding of fact is based upon the testimony of Kim Swanson, Patricia T. Clark, Veronica Kanina and the Application. "Fitness" was demonstrated by Patricia Clark and Matthew Clark testifying (1) that the Applicant is aware of the requirement for a safety rating and will undergo the requisite safety inspection, (2) that there are no outstanding judgments pending against the Applicant, and (3) that the Applicant will operate in compliance with

all statutes and regulations pertaining to for-hire motor carrier operations. Further, the Application contains (1) a certification that the Applicant is familiar with the regulations and statutes governing for-hire motor carrier services and (2) that there are no outstanding judgments pending against the Applicant. "Able" was demonstrated by Patricia Clark and Kim Swanson who testified that the Applicant is making arrangements to secure equipment to provide the services through a franchise agreement. According to the testimony, after All-8 receives authority, All-8 and Apartment Movers etc. will execute a franchise agreement whereby All-8 will purchase the equipment, such as trucks, office furniture, computers, etc., of Apartment Movers etc. Apartment Movers etc. was granted statewide authority to move household goods by this Commission in 1995. Further, according to the Late Filed Financial Statement Exhibit of the Applicant, All-8 possesses the financial wherewithal necessary to provide household good moving services between points and places in Greenville and Spartanburg counties. Further, according to the Application, All-8 is aware of the Commission's insurance requirements and provided assurance that All-8 would obtain the requisite insurance coverage. "Willingness" was demonstrated by the filing of the Application and the testimony of Patricia Clark indicating the Applicant's desire to undertake this business venture.

3. The public convenience and necessity would be served by All-8, Inc. receiving authority to provide household goods services between points and places in Greenville and Spartanburg counties. This finding of fact is based upon the testimony of Virginia Kanina and Kim Swanson. As a current resident of Laurens county who will soon move to Greenville county, Kanina testified that she contacted several movers in the

Greenville area. Kanina stated Apartment Movers, etc was the only moving company who could move her household goods at her convenience. Other movers could arrange to transport her goods after dark, required a driving fee, or requested a two-week notice. Swanson testified that although her company has statewide authority, she does not plan to initiate business in the Greenville/Spartanburg areas. Although All-8 has requested authority in several other counties in the Upstate, the Applicant presented no testimony or evidence that the public convenience and necessity is not already being served by certificated household goods movers in those counties. The burden of proof is on the Applicant to prove that public convenience and necessity is not being served in all the counties where the Applicant seeks to provide household goods moving services.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the All-8 has demonstrated through the Application and the testimony presented that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Reg. 103-133 (Supp. 2000).
2. The Commission concludes that All-8 has sufficiently demonstrated through its presentation that the public convenience and necessity between points and places in Greenville and Spartanburg counties requires the services proposed by All-8.
3. Based on the conclusions above, that All-8 has demonstrated that it meets the requirements of fit, willing, and able and that All-8 has demonstrated that the public convenience and necessity require its services in Greenville and Spartanburg counties, the

Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted to All-8 with the authority to provide for the movement of household goods between points and places in Greenville and Spartanburg Counties, South Carolina. This grant of authority is contingent upon All-8 complying with all Commission regulations, and this grant of authority is not effective until such time as All-8 comes into compliance with the Commission regulations as outlined below. This grant of authority is also contingent upon All-8 providing a written copy of the executed franchise agreement between All-8, Inc. and Apartment Movers etc.

IT IS THEREFORE ORDERED THAT:

1. The Applicant, All-8, Inc. d/b/a Apartment Movers etc. Greenville should be granted a Class E Certificate of Public Convenience and Necessity authorizing All-8, Inc. to provide transportation services by motor vehicle as follows:

HOUSEHOLD GOODS, AS DEFINED IN R.103-210(1):
Between points and places in Greenville and Spartanburg
Counties, South Carolina.

2. All-8, Inc. shall file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon compliance with S.C. Code Ann. Section 58-23-10, et seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann., Vol. 26 (1976), as amended, a Certificate shall be issued to All-8, Inc. authorizing the motor carrier services granted herein. Further, no Certificate shall be issued until All-8, Inc. provides the Commission with a copy of the executed franchise agreement between All-8, Inc. and Apartment Movers etc.

4. Prior to compliance with the above referenced requirements and receipt of a Certificate, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)